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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/072,447

02/07/2002

Jill Katz

2353.001

2667

21917

7590

06/22/2004

MCHALE & SLAVIN, P.A.

2855 PGA BLVD

PALM BEACH GARDENS, FL 33410

EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

10

DATE MAILED: 06/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/072,447

Applicant(s)

KATZ, JILL

Examiner

Karin M. Reichle

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3-30-04 has been entered.

### ***Specification***

#### ***Drawings***

2. The drawings were received on 3-30-04. These drawings are not approved by the Examiner.

Where is the support in the originally filed specification for the structure of element 35 as now proposed?

3. The drawings are objected to because in Figure 1, the lines or arrows from 13, 14 and 32 should be dashed to denote underlying structure. This also applies to the lines from 33 and 34 in Figure 2. In Figure 1, there are several undenoted lines. Also where is 35 shown? It is noted that fasteners with elasticity are no longer claimed. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Objections***

4. Claims 11-14 are objected to because of the following informalities: in Claim 11, lines 2 and 4, "the" should be --an-- and --a--, respectively. On lines 3 and 5, after "first", insert --longitudinal side--. On lines 10 and 11, change "side" to --sides--. Appropriate correction is required.

***Claim Rejections - 35 USC § 102/103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 11 and 13 are rejected under 35 U.S.C. 102(b) as anticipated by Walker GB '263 or, in the alternative, under 35 U.S.C. 103(a) as obvious over Walker GB '263 in view of Backus.

Claims 11 and 13: See Walker GB '263 at Figures, page 1, lines 15-24, page 1, line 34- page 2, line 13, page 2, lines 29-33, i.e. an article adapted for quick changing comprising a preformed body 1, having a front portion for covering the abdomen of a wearer having at least a second side 2 having a free edge, a back portion for covering the posterior of the wearer having at least a second side 2 having a free edge, a crotch portion (undenoted) permanently connecting the front and back portions and disposed intermediate of the sides of the article, a connection between the front portion and the back portion along a first side 4, one leg opening formed by the back portion, front portion, crotch portion and connection along the first side 4, the free edges of the second side forming an open side having cooperating fasteners 3a, 3b adapted to interengage forming a separable side seam, the front portion, back portion, crotch portion and separable side

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seam adapted to from another leg opening, and an absorbent pad (not shown), i.e. sanitary towel, see definition of "towel" infra, is disposed intermediate of the sides of the article, note position of tabs 6, i.e. disposed in the crotch portion. Claim 11 calls for a permanent connection between the portions at the first side to form a pre-formed leg opening. Walker clearly discloses that only the second side 2 need be separably connected, see Figures and page 1, lines 15-24, i.e. the first side 4 is not separably connected, i.e. permanently connected. It is the Examiner's first position that while the reference does not textually discuss what the first side 4 structure is when it is not separably connected, Figure 3 appears to show the edges of the right side connected, i.e. permanently, while the edges on the left side are separable. In any case, it is noted that the claim language does not require the portions to have distinct edges, i.e. the first side of the front portion could be monolithically formed with the first side of the back portion. Also see Backus '659, Figures and col. 3, lines 1-9, i.e. a side which is desired to be permanently connected can be monolithically formed or formed with edges which are permanently connected together. Therefore, to make the side of Walker which is not separably connected, i.e. permanently connected, either not separably connected by monolithically forming the front and back portions along the first side or by formation of edges at the first side which are permanently connected would be obvious, see *In re Siebentritt*, 54 CCPA 1083 (two equivalents are interchangeable for their desired function, express suggestion of desirability not needed to render such substitution obvious). With regard to the language "diaper" in the preamble, the prior art either includes or obvious includes all the structure set forth in the claim body which claim body structure is defined as a "diaper". Therefore, there is sufficient factual basis for one to conclude that the same structure of the prior art is inherently a "diaper" as set forth, see MPEP 2112.01, or

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necessarily and inevitably defines a “diaper”. Alternatively, the recitation has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker, alone, or with Backus, and further in view of Fullerton ‘490 and Cecil-Reaney ‘483.

Claims 12 and 14: Claim 14 requires the portions including an outer layer, and an inner layer with an absorbent pad disposed between the layers and claim 12 requires absorbent material in all the portions whereas Walker teaches an outer cover and an sanitary towel located therein for receiving a discharge (“towel” as defined by the dictionary is “a piece of absorbent cloth or paper used for wiping or drying”). Therefore Walker does not teach an inner layer or absorbent material in all the portions. However, sanitary towels or sanitary pads are well known in the art to include absorbent material enclosed in an outer open mesh or gauze covering such as, for example, taught by Fullerton and Cecil-Reaney. These references also show the towel or pad extending along the midline of the user and the entire extent of the midline of the holder

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therefore in order to receive the discharge. To make the towel of Walker of absorbent material and a covering would be obvious to one of ordinary skill in the art in that such composition for a sanitary towel or pad for discharge receipt is well known, see Fullerton and Cecil-Reaney, and the desire by Walker to employ a sanitary towel for receiving discharge. In so doing the covering would form an inner layer and thus, the prior art teaches the limitations of claim 14. Additionally, to position the towel along the entire midline of the outer cover of the Walker article as taught by Fullerton and Cecil-Reaney would be obvious to one of ordinary skill in the art in view of the recognition that such would provide proper location for discharge receipt and the desire of discharge receipt with the towel by Walker. It is noted that claim 12 does not recite how the extent of the portions relates to the extent of the article, e.g. front portion extends 40% of the longitudinal extent, etc.

### ***Response to Arguments***

9. Applicant's remarks have been carefully considered but are either deemed not persuasive for the reasons set forth supra or deemed moot in that such has not been reraised.

### ***Conclusion***


10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Adkins reference is cited as also teaching a separable garment.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
June 14, 2004